

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1969 OF 2004

Smt. Nathibai Damodar Thackersey

Womens' University ... Petitioner

versus

Shri Naresh A. Desai and ors. ... Respondents

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Mr. A.L. Gore for Mr. Rui Rodrigues, for the
Petitioner.

Mr. Mihir Desai, for Respondent No. 1.

...

CORAM : A.M.KHANWILKAR, J.

18th August 2004

P.C.:

. Heard Counsel for the parties. Rule.
Rule made returnable forthwith by consent. Mr.
Desai waives notice for Respondent No. 1, who is
the contesting Respondent. It is agreed that
Respondents Nos. 2 to 4 are formal Respondents.
Hence, notice to those Respondents is dispensed
with. As short question is involved, the

petition is taken up for final disposal forthwith by consent.

. This petition takes exception to the judgment and order passed by the Presiding Officer of the Mumbai University and College Tribunal dated November 29, 2003 in Appeal No. 55 of 2003. The said appeal was filed by Respondent No. 1, who was the non-teaching staff of the Petitioner University, questioning the correctness of the stand taken by the University in letter dated 30th September 2003 that the Respondent has ceased to be in service of the University at the end of his service on the project post. The appeal was resisted by the Petitioner on several grounds; amongst others, that the post on which the Respondent No. 1 came to be appointed was a tenure post for five years at Bombay and that he had applied pursuant to Circular issued by the Petitioner on September 10, 1986. In other words, the case of the Petitioner is that the appointment of the Respondent No. 1 on the post of Accountant in the National Information Centre was a fresh appointment. It was also argued as is noted in para 5 of the impugned judgment that the

Respondent No. 1 had not retained his lien on his original post at the time when he agreed to join the project post in National Information Centre. The grievance of the Petitioner is that inspite of such specific plea taken, the Tribunal, without considering the said contention, has proceeded to allow the appeal preferred by the Respondent No. 1 and such approach cannot stand the test of judicial scrutiny. Counsel for Respondent No. 1, on the other hand, submits that there is ample material on record to show that the Respondent No. 1 had retained his lien on his original post and that fact has been conceded by the Petitioner University in one of the letters. However, the fact remains that whether the Respondent No. 1 had retained his lien on his original post at the time when he agreed to join the project post in N.I.C. is a question of fact, on which no clear finding of fact has been returned by the Tribunal. In the event the Tribunal was to find, on appreciating the materials on record, that the Respondent No. 1 had retained his lien on his original post, in that situation, perhaps, the conclusion reached by the Tribunal in allowing the appeal of Respondent No. 1 can be said to be

a possible view. But, on the other hand, if the finding was to be recorded against the Respondent No. 1, then, obviously, it would be difficult to accept the situation that the Respondent No. 1 will still continue to have right in respect of his original post. Besides, the contention of the Respondent No. 1 before this Court is that his appointment on the post of Accountant in N.I.C. was through Departmental Promotion and not a fresh appointment. However, the Tribunal has not recorded any opinion even with regard to this contention. The appropriate course, to my mind, is to relegate the parties before the Tribunal, who, in turn, shall consider the aforesaid pleas taken on behalf of the parties and record clear finding in that behalf, as to whether the retention of lien was because of express application made for that purpose or by operation of law. Only thereafter, the Tribunal may proceed to decide other contentious issues between the parties on its own merits in accordance with law uninfluenced by the observations made in the impugned judgment, or, for that matter, in the present order. All questions are left open to be decided by the Tribunal. The Tribunal to decide the appeal as

expeditiously as possible preferably within three months from the date of receipt of writ of this Court, or, on production of authenticated copy of this order. Writ Petition disposed of on the above terms. No order as to costs.

. Parties be supplied authenticated copy of this order.

(A.M.KHANWILKAR, J.)